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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

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6 BENNY HAMMONS,

Case No. 3:19-cv-00063-MMD-CLB

7 Plaintiff,

ORDER

8 v.

9 DONTE,

10 Defendant.

11 *Pro se* Plaintiff Benny Hammons brings this action under 42 U.S.C. § 1983 against  
12 Defendant Michael Dante,<sup>1</sup> alleging claims of excessive force and failure to protect in  
13 violation of his Eighth Amendment rights. (ECF No. 3.) On November 2, 2020, Defendant  
14 filed a motion for summary judgment. (ECF No. 18 (“Defendant’s Motion”).) Hammons  
15 filed a cross-motion for summary judgment (ECF No. 26) and a motion to dismiss  
16 Defendant’s motion for summary judgment (ECF No. 27), collectively “Hammons’  
17 Motions.”<sup>2</sup> Hammons also filed a motion for relief from Defendant’s motion for summary  
18 judgment (ECF No. 25) and a motion for appointment of counsel. (ECF No. 31.)

19 Before the Court is the Report and Recommendation (“R&R” or  
20 “Recommendation”) of United States Magistrate Judge Carla L. Baldwin (ECF No. 34),  
21 recommending Defendant’s motion for summary judgment be denied, that Hammons’  
22 cross-motion for summary judgment and motion to dismiss also be denied, that  
23 Hammons’ motion for relief be denied as moot, and that Hammons’ motion for  
24 appointment of counsel be denied. The parties had until April 8, 2021, to file an objection.  
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27 <sup>1</sup>As filed and in the Complaint, Hammons named “Donte” as the defendant;  
28 Defendant’s legal name is Michael Dante.

<sup>2</sup>The Court has also reviewed the parties’ various responsive briefs. (ECF Nos. 28,  
30, 32, 33.)

1 To date, no objection to the R&R has been filed. For this reason, and as explained below,  
2 the Court adopts the R&R, and will deny the above referenced motions.

3 The Court “may accept, reject, or modify, in whole or in part, the findings or  
4 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party  
5 fails to object to a magistrate judge’s recommendation, the Court is not required to  
6 conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas*  
7 *v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114,  
8 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and  
9 recommendations is required if, but *only* if, one or both parties file objections to the  
10 findings and recommendations.”) (emphasis in original); Fed. R. Civ. P. 72, Advisory  
11 Committee Notes (1983) (providing that the Court “need only satisfy itself that there is no  
12 clear error on the face of the record in order to accept the recommendation.”).

13 Because there is no objection, the Court need not conduct de novo review, and is  
14 satisfied Judge Baldwin did not clearly err. Here, Judge Baldwin recommends denying  
15 both parties’ motions for summary judgment. (ECF No. 34.) Judge Baldwin found that  
16 Defendant failed to meet his initial burden that a reasonable juror could not find for  
17 Hammons, so Defendant’s Motion must be denied. (*Id.* at 7.) Because Hammons’ verified  
18 Complaint depicts a “vastly different version of events” from what Defendant claims  
19 happened, Judge Baldwin found there was a dispute of fact that is inappropriate for the  
20 Court to resolve at summary judgment.<sup>3</sup> (*Id.* at 8, 11.) The Court agrees with Judge  
21 Baldwin’s reasoning and will deny the summary judgment motions. (ECF Nos. 18, 26,  
22 27.)

23 Judge Baldwin further recommends denying Hammons’ motion for appointment of  
24 counsel because the two Eighth Amendment claims do not create the requisite  
25 “exceptional circumstances” for appointment of counsel in a civil case. (ECF No. 34 at  
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27 <sup>3</sup>Judge Baldwin also noted that even if the facts were not in dispute, the Court  
28 could not find that the force used against Hammons’ was not ‘excessive.’ (ECF No. 34 at 8.)

1 14.) The Court agrees. Having thus reviewed the R&R and the record in this case, the  
2 Court will adopt the R&R in full.

3 It is therefore ordered that Judge Baldwin's Report and Recommendation (ECF  
4 No. 34) is accepted and adopted in full.

5 It is further ordered that Defendant's motion for summary judgment (ECF No. 18)  
6 is denied.

7 It is further ordered that Hammons' cross-motion for summary judgment (ECF No.  
8 26) is denied.

9 It is further ordered that Hammons' motion to dismiss (ECF No. 27) is denied.

10 It is further ordered that Hammons' motion for relief (ECF No. 25) is denied as  
11 moot.

12 It is further ordered that Hammons' motion for appointment of counsel (ECF No.  
13 31) is denied.

14 DATED THIS 15<sup>th</sup> Day of April 2021.

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17 MIRANDA M. DU  
18 CHIEF UNITED STATES DISTRICT JUDGE  
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